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NEW YORK, NY 10017

EXAMINER

SIMONE, CATHERINE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1772

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/646,553

Applicant(s)

GILLET ET AL.

Examiner

Catherine Simone

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1, 6, 15 and 16** is rejected under 35 U.S.C. 102(e) as being anticipated by Wood et al. (5,773,374).

Wood et al. discloses a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet where the finished laminate has either a microembossed effect, a macroembossed effect or both (see col. 3, lines 24-34), wherein a self-adhesive coating has been applied onto the textile sheet side (see col. 4, lines 19-21), and wherein the first layer is composed of two coextruded layers with an outer layer and a tie layer (see col. 4, lines 55-58), where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants (see col. 6, lines 60-67). Regarding **claim 6**, the polymer film inherently comprises at least 65% of a thermoplastic elastomer (see col. 5, lines 30-

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50). Regarding **claims 15 and 16**, only the polymer film layer is microembossed (see col. 3, lines 30-34).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1, 2, 6 and 15-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Masatoshi (GB 2 252 528) in view of Wood et al. (5,773,374).

Masatoshi discloses a laminate composed of at least a first layer of an elastic polymer film (Fig. 2, #1) and of a second layer of an elastic textile sheet (Fig. 2, #2), where the finished laminate has either a microembossed effect, a macroembossed effect, or both, and wherein a self-adhesive coating (Fig. 2, #3) has been applied onto the textile sheet side. However, Masatoshi fails to disclose the first layer being composed of two co-extruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants. Wood et al. teaches that it is old and well-known in the analogous art to have a first layer being composed of two co-extruded layers with an outer layer and a tie layer (see col. 4, lines 55-59), where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants (see col. 6, lines 60-67) for the purpose of producing a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the first layer in Masatoshi be composed of two co-extruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants, as suggested by Wood et al. in order to produce a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

Furthermore, regarding **claims 15, 16, 19 and 20**, Masatoshi fails to disclose the polymer film layer being microembossed. Wood et al. teaches that it is old and well-known in the analogous art to have a polymer film layer being microembossed (see col. 3, lines 30-34) for the purpose of producing a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the polymer film layer in Masatoshi be microembossed as suggested by Wood et al. in order to produce a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

In regard to **claims 19 and 20**, normally, it is to be expected that a change in shape of the embossment of the first layer and the second layer would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the

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particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. *In re Dailey et al*, 149 USPQ 47 CCPA 1966.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to change the shape of the embossment noted in both Masatoshi and Wood et al. to be macroembossed. One skilled in the art would have been motivated to do so in order to form an elastic laminate, since it has been held that the change in form or shape of the embossement would be an unpatentable modification absence of showing unexpected results.

Regarding **claim 2**, note the weight per unit area of the polymer film is from 15 to 150 g/m² (see page 7, lines 28-30) and the weight per unit area of the textile sheet is from 25 to 200 g/m² (see page 8, line 8). Regarding **claim 6**, note the polymer film of the first layer inherently comprises at least 65% of a thermoplastic elastomer (see page 7, lines 21-29). Regarding **claims 17 and 18**, the textile layer is macroembossed and microembossed (Fig. 2, #2; also see page 8, lines 11-20).

6. **Claims 3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Masatoshi (GB 2 252 528) in view of Wood et al. (5,773,374) and in view of Abuto et al. (6,096,668).

Masatoshi discloses a laminate composed of at least a first layer of an elastic polymer film (Fig. 2, #1) and of a second layer of an elastic textile sheet (Fig. 2, #2), where the finished laminate has either a microembossed effect, a macroembossed effect, or both, and wherein a self-adhesive coating (Fig. 2, #3) has been applied onto the textile sheet side. However, Masatoshi fails to disclose the first layer being composed of two co-extruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants. Wood et al. teaches that it is old and well-known in the analogous art to

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have a first layer being composed of two co-extruded layers with an outer layer and a tie layer (see col. 4, lines 55-59), where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants (see col. 6, lines 60-67) for the purpose of producing a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the first layer in Masatoshi be composed of two co-extruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins without addition of additives or colorants, as suggested by Wood et al. in order to produce a laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet, where the finished laminate has a microembossed effect.

However, both Wood et al. and Masatoshi fail to teach more than one layer of a copolymer of ethylene and polar comonomers or of a mixture of LDPE and an LLDPE, and the polymer film of the first layer being a copolymer of ethylene and an alpha-olefin. Abuto et al. teaches that it is old and well-known in the analogous art to have more than one layer of a copolymer of ethylene and polar comonomers or of a mixture of LDPE and an LLDPE (col. 7, lines 49-55), and the polymer film of the first layer being a copolymer of ethylene and an alpha-olefin (col. 6, lines 49-60) for the purpose of producing an elastic film laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the first layer in Masatoshi comprise more than one layer

of a copolymer of ethylene and polar comonomers or of a mixture of LDPE and an LLDPE, and be composed of a copolymer of ethylene and an alpha-olefin as suggested by Abuto et al. in order to produce and elastic film laminate composed of at least a first layer of an elastic polymer film and of a second layer of an elastic textile sheet.

Response to Arguments

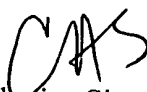
7. Applicant's arguments with respect to claims 1-4, 6 and 15-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Catherine Simone
Examiner
Art Unit 1772

June 11, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/12/03